

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS				1. REQUISITION NUMBER 812-4649		PAGE OF PAGES 1 23	
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30							
2. CONTRACT NUMBER		3. AWARD/EFF. DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER 53SBNB7C1160	
7. FOR SOLICITATION INFORMATION CALL -->		a. NAME Julie Liu		b. TELEPHONE NUMBER (No Collect Calls) (301) 975-6727		8. OFFER DUE DATE/LOCAL TIME 06/02/97 3:00 PM	
9. ISSUED BY NAT'L INSTITUTE OF STANDARDS & TECH ACQUISITION & ASSISTANCE DIVISION BUILDING 301, ROOM B117 GAITHERSBURG, MD 20899-0001		CODE		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED SET ASIDE: 000 % FOR <input type="checkbox"/> SMALL BUSINESSES <input type="checkbox"/> SMALL DISADV. BUSINESSES 8(A) SIC: 3827 FSC: SIZE STANDARD: 500 employees		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE <input checked="" type="checkbox"/> 13a. THIS CONTRACT RATED ORDER UNDER DPAS (15 CFR 700) 13b. RATING NS 14. METHOD OF SOLICITATION <input checked="" type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
15. DELIVER TO NAT'L INSTITUTE OF STANDARDS & TECH BUILDING 301, RECEIVING ROOM RT 270 AND QUINCE ORCHARD ROAD GAITHERSBURG, MD 20899-0001				CODE 0			
17a. CONTRACTOR/OFFEROR TELEPHONE NO.				18a. ADMINISTERED BY NAT'L INSTITUTE OF STANDARDS & TECH ACQUISITION & ASSISTANCE DIVISION BUILDING 301, ROOM B117 GAITHERSBURG, MD 20899-0001			
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>				18b. SUBMIT INVOICE TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO		20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY		22. UNIT	
0001		Complete Scanning Probe Microscope (SPM) System		1		EA	
0002		On-Site Set-Up/Installation and Training		1		JOB	
0003		Operating Manuals		1		SET	
(Attach Additional Sheets as Necessary)							
25. ACCOUNTING AND APPROPRIATION DATA CC:78124808(92%), 78120800(8%) OBCL:3110/FFP						26. TOTAL AWARD AMOUNT (For Govt Use Only)	
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. 52.212-3 AND 52.212-5 ARE ATTACHED.						ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.	
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. 52.212-5 IS ATTACHED.						ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.	
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 3 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN. <input checked="" type="checkbox"/>				29. AWARD OF CONTRACT: REFERENCE OFFER DATED _____. YOUR OFFER ON SOLICITATION (BLOCK 5) INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS: _____			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) Paul G. Cataldo			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT)		31c. DATE SIGNED	
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, ACCEPT AS NOTED				33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. VOUCHER NUMBER	
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE		32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42a. RECEIVED BY (Print)		40. PAID BY	
				42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

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STATEMENT OF WORK/SPECIFICATIONS

A.1 SPECIFICATIONS FOR SCANNING PROBE MICROSCOPE SYSTEM

Equipment Specifications:

SAMPLE STAGE of the scanning probe microscope (SPM) system shall be a motorized stage compatible with 200 mm vacuum chuck for 100 mm, 150 mm, and 200 mm wafers with 200 mm X-Y displacement. Lateral resolution 2.5 microns. Repeatability +/- 5 microns. The SCANNING MICROSCOPE HEAD shall provide contacting, non-contacting, intermittent-contacting, modulation probe and lift mode operation in air as atomic force microscope (AFM), lateral force microscope (LFM), scanning tunneling microscope (STM), scanning capacitance microscope (SCM), electrostatic force microscope (EFM) -- also referred to as Kelvin Probe Microscopy, scanning thermal microscope (SthM), and magnetic force microscope (MFM). The AFM mode shall include attachments to measure force vs. distance curves. The SCM mode shall include attachments to measure capacitance "tapping mode" (also called scanning differential capacitance). The EFM shall include attachments to oscillate the probe at harmonic frequency other than the fundamental, with the lift mode operation as a Kelvin probe microscope thus allowing capacitance or work function measurement. Topographic noise RMS level < 0.05 nm in an environment with 75 db acoustic white noise. The probe intrinsic RMS noise level shall be compatible with atomic resolution data acquisition and X-Y resolution 0.025 nm; Z resolution 0.0025 nm. Probe scan angle shall be user selectable. SAMPLE INSPECTION: on-axis high-resolution optical magnified view of probe and sample with 1000x or higher magnification. 4:1 Motorized zoom or higher, color DDC camera and 13" color monitor. Variable viewing field area 150 microns x 120 microns to 600 microns x 480 microns. Linear resolution 1.5 microns. Minimum X-Y stage translation 25 nm for visual inspection. Sample observation during scanning real time. VIBRATION ISOLATION: high performance acoustic enclosure mounted on vibration-isolation table. Enclosure shall be provided with nitrogen purge plus roughing vacuum capability. Enclosure shall be vacuum tight at the 100 Pa (about 1 Torr) level. The sample isolation mounting shall be appropriate to acquire state-of-the-art topographic images for critical dimension metrology of sub-micrometer ICs metallizations, dielectrics trenches, and patterned photoresist components. The system PRINTER shall be capable of producing color images at least 10 cm x 12.5 cm size or larger with highest-quality contrast. The WORKSTATION shall consist of CPU with 200 MHZ Pentium processor, 512 KB cache memory, 64 MB RAM, hard disk 3 GB, 3 1/2 " MB floppy and 12X.EIDE.CD ROM drives. Serial mouse. Windows 95 operating system. Window graphic accelerator, 256 colors, 72 Hz vertical refresh, 17" high resolution color display monitor with selectable color palettes and palette editor, multi-image presentation and print formats, 3-D image rendering with variable magnification, shading, with selectable rotation and apparent image inclination, reproducible in hard copy. Offline storage shall be supported for massive data acquisition. The CONTROL INTERFACE

A.1 (Continued)

shall provide 20-bit DACs on X, Y, Z; three 16-bit DACs; four 16-bit ADCs with 22 multiplexed channels. Three input auxiliary analog feedback electronics with three BNC connectors for high voltage X-Y piezo drivers, external sample modulation, Z-position modulation, external error input, outputs for tunneling current and force signal. Probe modulation for enhanced electric or magnetic force imaging. Tracking of probe oscillation phase for improved signal to noise ratio. Force sensitivity in the fN range. Control monitor. Detailed electrical circuits of the analog and digital bus together with schematics of relevant mechanical parts. SYSTEM POWER shall be 115/230 V AC, single phase 60 Hz. DATA ACQUISITION: Windows 95 software shall provide user ability to control the microscope operation for custom applications or automatic data acquisition, and image processing shall be supplied to allow user modifications, if needed, to perform high resolution scan rotation, user defined area and scan angle with 512 x 512 pixel image. Up to 8 images acquired simultaneously, forward and reverse scan. Up to 4 images displayed simultaneously during data acquisition. Unlimited image buffers with up to 28 images displayed per screen. Dual bias and dual set-point imaging for both STM and AFM. Generalized spectroscopy software with up to 8 simultaneous dependent outputs. Closed loop scan and calibration software. Image-based offset and zoom controls. Real-time linescan and FFT display with linear and log scaling. Data export function shall allow high-quality 2D and 3D data printing with selectable 24-bit color. Macro sequence editor, data acquisition, and analysis. Real-time data display during measurements with tilt correction, auto-contrast, and curvature correction. Digital meter for signal monitoring. Full Windows multi-tasking capability. Operation with both constant force or constant height imaging shall be allowed in SFM mode. Operation with both constant current or constant height shall be allowed in STM mode. Force vs. distance spectroscopy software. IMAGE PROCESSING: Fourier power spectrum with orthogonal and polar filter functions. Low and high pass filters with variable cut-off, slope and smoothing. Wiener filters and autocorrelation calculations. Data export in HDF, BMP, DIB or in Windows Clipboard. Zeroth to seventh order polynomial surface fit, zoom and deglitch software. LINE ANALYSIS: user selectable profile traces with line averaging capability, bearing area ratio plot, histogram. Real-time Fourier filter for data bandwidth selection. Data acquisition in spatial or Fourier domain: height, median height, average height, linewidth, distance, length, angle, area, average roughness, peak-to-valley roughness (Rpv), 2-levels bearing area ratio. AREA ANALYSIS: user selectable template to include or exclude data regions: median height, average height, surface area, volume, average roughness, RMS roughness, Rpv.

Services specifications:

Vendor shall provide three customer references capable of furnishing information on the performance and reliability of comparable SPM systems purchased from the vendor. Vendor shall provide all components

A.1 (Continued)

necessary for operation of the system, and shall set up the system and demonstrate performance at NIST (or at an approved client facility) prior to contract award. Vendor shall provide for training of NIST personnel in the full operation of all SPM modes, and shall provide continued technical consultation support on all SPM modes. Vendor shall also supply a full set of operating manuals.

A.2 DELIVERY SCHEDULE

Delivery of this order is required within 90 days of receipt of order by the Contractor.

A.3 INSPECTION AND ACCEPTANCE

A 30-day testing period shall be allowed by the Contractor for NIST to check equipment for adherence to established specifications.

A.4 INFORMATION CONTACTS

Technical and administrative contacts will be designated at time of award.

CONTRACT CLAUSES

B.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (JUN 1988)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER	TITLE	DATE
52.212-4	CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS	MAY 1997

B.2 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL ITEMS (AUG 1996)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.222-3, Convict Labor (E.O. 11755); and

(2) 52.233-3, Protest After Award (31 U.S.C 3553).

(b) The Contractor agrees to comply with the FAR clauses in this paragraph (b) which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

— (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

— (2) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

— (3) 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3));

(4) 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4));

— (5) 52.219-14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

B.2 (Continued)

- XX (6) 52.222-26, Equal Opportunity (E.O. 11246).
 - XX (7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).
 - XX (8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
 - XX (9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
 - XX (10) 52.225-3, Buy American Act-Supplies (41 U.S.C. 10).
 - (11) 52.225-9, Buy American Act-Trade Agreements Act-Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501-2582).
 - (12) Reserved.
 - (13) 52.225-18, European Union Sanction for End Products (E.O. 12849).
 - (14) 52.225-19, European Union Sanction for Services (E.O. 12849).
 - XX (15) (i) 52.225-21, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program (41 U.S.C. 10, Pub. L. 103-187).
 - (ii) Alternate I of 52.225-21.
 - (16) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).
 - (17) 52.247-64, Preference for Privately Owned U.S.- Flag Commercial Vessels (46 U.S.C. 1241).
- (c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:
- (1) 52.222-41, Service Contract Act of 1965, As amended (41 U.S.C. 351, et seq.).
 - (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

B.2 (Continued)

- (3) 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - (4) 52.222-44, Fair Labor Standards Act and Service Contract Act-Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).
 - (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).
- (d) Comptroller General Examination of Record. The Contractor agrees to comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.
- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
 - (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
 - (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not

B.2 (Continued)

required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components--

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a));
- (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and
- (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS

C.1

SOLICITATION PROVISIONS

D.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (JUN 1988)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available.

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) PROVISIONS

NUMBER	TITLE	DATE
52.212-1	INSTRUCTIONS TO OFFERORS-- COMMERCIAL ITEMS	OCT 1995

D.2 52.212-2 EVALUATION--COMMERCIAL ITEMS (OCT 1995)

- (a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

technical design and quality, past performance, price, and product versatility.

Technical and past performance, when combined, are significantly more important than price.

- (b) Options. The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).
- (c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

D.3 52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS COMMERCIAL ITEMS (JAN 1997)

- (a) Definitions. As used in this provision:

D.3 (Continued)

Emerging small business means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

Small disadvantaged business concern means a small business concern that--

- (1) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business, having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and
- (2) Has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization and which meets the requirements of 13 CFR Part 124.

Women-owned small business concern means a small business concern--

- (1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more

D.3 (Continued)

women.

- (b) Taxpayer identification number (TIN) (26 U.S.C. 6050M).
(1) Taxpayer Identification Number (TIN).

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis. _____

(2) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(3) Common Parent.

☐ Offeror is not owned or controlled by a common parent.

Name and TIN of common parent:

Name _____

D.3 (Continued)

TIN _____

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

- (1) Small business concern. The offeror represents as part of its offer that it ☐ is, ☐ is not a small business concern.
- (2) Small disadvantaged business concern. The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.
- (3) Women-owned small business concern. The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

- (4) Women-owned business concern. The offeror represents that it ☐ is, ☐ is not, a women-owned business concern.
- (5) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:
- (6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]
 - (i) (Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).) The offeror represents as part of its offer that it ☐ is, ☐ is not an emerging small business.

D.3 (Continued)

(ii) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).) Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts)

(Check one of the following):

Number of Employees

Average Annual Gross Revenues

<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51-100	<input type="checkbox"/> \$1,000,001-\$2 million
<input type="checkbox"/> 101-250	<input type="checkbox"/> \$2,000,001-\$3.5 million
<input type="checkbox"/> 251-500	<input type="checkbox"/> \$3,500,001-\$5 million
<input type="checkbox"/> 501-750	<input type="checkbox"/> \$5,000,001-\$10 million
<input type="checkbox"/> 751-1,000	<input type="checkbox"/> \$10,000,001-\$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(d) Certifications and representations required to implement provisions of Executive Order 11246--

(1) Certification of non-segregated facilities. (Applies only if the contract amount is expected to exceed \$10,000)--

By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(2) Previous Contracts and Compliance. The offeror represents that--

D.3 (Continued)

- (i) It [] has, [] has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and
 - (ii) It [] has, [] has not, filed all required compliance reports.
- (3) Affirmative Action Compliance. The offeror represents that--
 - (i) It [] has developed and has on file, [] has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or
 - (ii) It [] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.
- (e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.
- (f) Buy American Act-Trade Agreements-Balance of Payments Program Certificate. (Applies only if FAR clause 52.225-9, Buy American Act-Trade Agreement-Balance of Payments Program, is included in this solicitation.)
 - (1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act-Trade Agreements Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

D.3 (Continued)

(2) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
---------------	-------------------

_____	_____
_____	_____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

- (i) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act-Trade Agreements-Balance of Payments Program:"

(Insert line item numbers)

- (ii) The offeror certifies that the following supplies qualify as "Caribbean Basin country end products" as that term is defined in the clause entitled "Buy American Act-Trade Agreements--Balance of Payments Program":

(Insert line item numbers)

D.3 (Continued)

(4) Offers will be evaluated in accordance with FAR Part 25.

(g) (1) Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate. (Applies only if FAR clause 52.225-21, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program, is included in this solicitation.)

(i) The offeror certifies that each end product being offered, except those listed in paragraph (g)(1)(ii) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program," and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(ii) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
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_____	_____
_____	_____

(List as necessary)

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. The offeror certifies that the following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program":

D.3 (Continued)

(Insert line item numbers)

- (iv) Offers will be evaluated in accordance with FAR Part 25 of the Federal Acquisition Regulation. In addition, if this solicitation is for supplies for use outside the United States, an evaluation factor of 50 percent will be applied to offers of end products that are not domestic or NAFTA country end products.

- (2) Alternate I. If Alternate I to the clause at 52.225-21 is included in this solicitation, substitute the following paragraph (g)(1)(iii) for paragraph (g)(1)(iii) of this provision:

- (g) (1) (iii) Offers will be evaluated by giving certain preferences to domestic end products or Canadian end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are Canadian end products. Products that are not identified and certified below will not be deemed Canadian end products.

The offeror certifies that the following supplies qualify as "Canadian end products" as that term is defined in the clause entitled "Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program":

(Insert line item numbers)

- (h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). The offeror certifies, to the best of its knowledge and belief, that--

- (1) The offeror and/or any of its principals [] are, [] are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and
- (2) [] Have, [] have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining,

D.3 (Continued)

attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and [] are, [] are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

D.4 DEPARTMENT OF COMMERCE AGENCY-LEVEL PROTEST
PROCEDURES LEVEL ABOVE THE CONTRACTING
OFFICER (DEC 1996)

I. PURPOSE: To implement the requirements of Executive Order No. 12979 and Federal Acquisition Regulation (FAR 33.103).

On October 25, 1995, President Clinton signed Executive Order No. 12979 which directs heads of executive agencies to develop administrative procedures for resolving protests to awards of procurement contracts within their agencies at a level above the contracting officer. Authority to administer procurement-related directives has been delegated within the Department of Commerce through the Chief Financial Officer and Assistant Secretary for Administration to the Director for Acquisition Management (Procurement Executive).

The Department's goal is to encourage protesters to resolve their protests at the agency level, help build confidence in the Government's acquisition system, and reduce protests to the General Accounting Office and other external fora. Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions. If concerns cannot be resolved, protesters may use these procedures when a resolution is requested from the agency at a level above the contracting officer.

II. DEFINITIONS:

An agency protest is one that may be filed with either the contracting officer or the protest decision authority but not both. When a protester decides to file a protest at the agency level with the protest decision authority, the guidelines set forth in these established agency level protest procedures above the contracting officer apply. These procedures are in addition to the existing protest procedures contained in the Federal Acquisition Regulation (FAR) Part 33.102. A day is a calendar day. In computing a period of time for the purpose of these procedures, the day from which the period begins to run is not counted. When

D.4 (Continued)

the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Washington, DC offices of the Department of Commerce are closed for all or part of the last day, the period extends to the next day on which the Department is open.

III. PROCEDURES:

- a. Protesters using these procedures may protest to the protest decision authority who will make the final decision for the Department. Protests shall be addressed to:

Mr. Jorge R. Urrutia
Director of Administration
National Institute of Standards and Technology
Building 101, Room A1105
Gaithersburg, Maryland 20899
FAX No. 301-926-7203

The outside of the envelope or beginning of the FAX transmission must be marked "Agency-level Protest". The protester shall also provide a copy of the protest within 1 day to the responsible contracting officer and a copy to the addressee indicated below:

Contract Law Division
Office of the Assistant General Counsel for Finance and
Litigation
Department of Commerce, Room H5882
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
(FAX Number 202-482-5858)

- b. Election of forum: While a protest is pending at the agency level with the protest decision authority, the protester agrees not to protest to the General Accounting Office (GAO) or any other external fora. If the protester has already filed with the GAO or other external fora, the procedures described here may not be used.
 1. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. In cases other than those covered in the preceding two sentences, protests shall be filed not later than 10 days after the basis of the protest is known or should have been known, whichever

D.4 (Continued)

is earlier.

2. To be filed on a given day, protests must be received by 4:30 PM current local time. Any protests received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is provided.
3. To be complete, protests must contain the following information:
 - (i) the protester's name, address, telephone number, and fax number
 - (ii) the solicitation or contract number, name of contracting office and the contracting officer
 - (iii) a detailed statement of all factual and legal grounds for protests, and an explanation of how the protester was prejudiced
 - (iv) copies of relevant documents supporting protester's statement
 - (v) a request for ruling by the agency
 - (vi) statement as to form of relief requested
 - (vii) all information establishing that the protester is an interested party for the purpose of filing a protest
 - (viii) all information establishing the timeliness of the protest.

All protests must be signed by an authorized representative of the protester.

Within 14 days after the protest is filed, the contracting officer will prepare an administrative report that responds to the issues raised by the protester and addresses any other issues, which, even if not raised by the protester, have been identified by agency officials as being relevant to the fairness of the procurement process. For good cause shown, the protest decision authority may grant an extension of time for filing the administrative report and for issuing the written decision. When an extension is granted, the protest decision authority will notify the protester and all interested parties within 1 day of the decision to grant the extension.

D.4 (Continued)

Unless an extension is granted, the protest decision authority will issue a decision within 35 days of the protest. The protest decision authority's final decision will be binding on the Department of Commerce and not subject to further appeals.

The protest decision authority shall send a written ruling and a summary of the reasons supporting the ruling to the protester by certified mail, return receipt requested with information copies to the applicable contracting office and Office of Acquisition Management.

Effect of protest on award and performance:

When a protest is filed prior to award, a contract may not be awarded unless authorized by the Head of the Contracting Activity (HCA) based on a written finding that:

- (i) the supplies or services are urgently required,
- (ii) delivery or performance would be unduly delayed by failure to make the award promptly, or
- (iii) a prompt award will be in the best interest of the Government.

When a protest is filed within 10 days after contract award or 5 days after a debriefing date was offered to the protester under a timely debriefing request in accordance with FAR 15.1004, whichever is later, the contracting officer shall immediately suspend performance pending the resolution of the protest within the agency, including any review by an independent higher official, unless continued performance is justified. The HCA may authorize contract performance, notwithstanding the protest, based on a written finding that:

- (i) contract performance would be in the best interest of the United States, or
- (ii) urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

IV. REMEDIES:

The protest decision authority may grant one or more of the following remedies:

D.4 (Continued)

- (1) terminate the contract,
- (2) re-compete the requirement,
- (3) issue a new solicitation,
- (4) refrain from exercising options under the contract,
- (5) award a contract consistent with statutes and regulations,
- (6) amend the solicitation provisions which gave rise to the protest and continue with the procurement,
- (7) such other remedies as the decision-maker may determine are necessary to correct a defect. Designated Protest Decision Authority for Operating Unit as follows: